

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 224 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAGHUNATHSING HAJARISING CHAUDHARY

Versus

COMMISSIONER OF POLICE

Appearance:

MR VH PATEL with MR ASIM J PANDYA for Petitioner
MS PUNANI ADDL.GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective
parties.

2. The petitioner challenges the order of preventive
detention dated 21st November, 1998 made by the
Commissioner of Police, Ahmedabad City under the powers
conferred upon him under Sub-section (1) of Section 3 of

the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as the "Act").

3. The petitioner is alleged to be a bootlegger within the meaning of Section 2(b) of the Act and his activities are found to be prejudicial to the maintenance of public order. A prohibition offence has been registered against the petitioner on 17th November, 1998 which is pending for investigation. In the said case, a huge quantity of foreign liquor was recovered from the possession of the petitioner. The petitioner is alleged to be a driver of the truck in which the aforesaid quantity of liquor was being transported. The two persons, on the assurance of anonymity , have given statements in respect of the nefarious activities of the petitioner, and its adverse effect on the public tranquility and the even tempo of life. The witnesses have particularly narrated the incident that occurred on 4th November, 1998 and 25th October, 1998 respectively. In both the incidents, the witnesses are stated to have been beaten by the petitioner in a public place in a populated area. The petitioner is also alleged to have used weapons for intimidating the people who had gathered at the spot of incidents. On both the occasions, terror and a feeling of insecurity were created disturbing the even tempo of life.

4. It is submitted that the petitioner is a native of Rajasthan and does not know Gujarati language. He, therefore, had demanded the grounds of detention and the supporting material in Hindi, the language he knows well. Such Hindi translation of the grounds of detention and the supporting material were not supplied to the petitioner till 1st December, 1998. The petitioner thus having not been supplied with the grounds of detention in Hindi language as soon as the order was made, the action is contrary to the statutory provisions, and the order is, therefore, vitiated. It is next contended that the detaining authority has wrongly relied upon the statements given by the witnesses, since the detaining authority has not recorded his subjective satisfaction in respect of the genuineness of the statements given by the witnesses. Besides the privilege, in respect of the names and other particulars of the witnesses, claimed under Section 9(2) of the Act is also not warranted. In any view of the matter, the offence alleged to have been committed by the petitioner does not have potentiality of disturbing peace and public tranquility. The petitioner, therefore, could not have been detained under the Act. In support of his submissions, Mr. Patel has relied upon the judgment of the Supreme Court in the matter of

Mustakmiya Jabbarmiya Shaikh Vs. M.M.Mehta, Commissioner of Police and Others, (1995(2) G.L.R. 1268).

5. The petition is contested by the learned Assistant Government Pleader Ms. Punani. She has relied upon the affidavit made by the detaining authority, wherein it is contended that the grounds of detention and the statements of the witnesses had to be translated in Hindi, and therefore, the same could not be furnished to the petitioner immediately. However the same have been supplied to the petitioner within the statutory period of seven days. Besides, the statements given by the witnesses disclose the petitioner's activities to be prejudicial to the maintenance of public order. Ms. Punani has also relied upon the judgment of the Supreme Court in the matters of Kanuji S. Zala Vs. State of Gujarat and Others, [(1999) 4 SCC 514] and of Amanulla Khan Kudeatulla Khan Pathan Vs. State of Gujarat & others (JT 1999 (4) SC 455).

6. I have perused the grounds of detention and the supporting material. It appears that the petitioner being a Hindi speaking person, the grounds of detention and the supporting material were got translated into Hindi and furnished to the petitioner under the covering letter dated 30th November, 1998. The same was served upon the petitioner through the Superintendent of Jail on 1st December, 1998. Thus the grounds of detention have been furnished to the petitioner within the stipulated period of seven days. The interregnum period having been spent on getting the documents translated into Hindi, it cannot be said that the same are not furnished to the petitioner as soon as possible.

7. Mr. Patel has vehemently argued that the detaining authority has failed to record his subjective satisfaction in respect of the genuineness of the statements given by the witnesses. The subjective satisfaction recorded by the detaining authority is, therefore, vitiated. I am unable to agree with the contention raised by Mr. Patel. Having perused the statements given by the witnesses and the verification made by the detaining authority, I am satisfied that not only the detaining authority had verified the genuineness of the statements given by the witnesses but also the fear expressed by them. Though the subjective satisfaction in this respect has not been recorded in the grounds of detention, in his affidavit in reply to the petition, the detaining authority has categorically stated that he had carefully examined and considered all the materials and had also personally verified the

genuineness and correctness of the statements given by the witnesses in the unregistered offences. Hence it is evident that the detaining authority had, before relying upon the said statement satisfied himself in respect of the genuineness of the contents thereof, and of the fear expressed by the witnesses. The subjective satisfaction recorded in this respect neither can be said to be vitiated, nor the privilege claimed under Section 9(2) of the Act can be said to be unwarranted. But for the assurance given to the witnesses, they would not have given the statements against the petitioner before the Police. Mr. Patel has submitted that neither the offences registered against the petitioner, nor the unregistered incidents disclose the activities of the petitioner which would be prejudicial to the maintenance of public order. On the similar facts, the Hon'ble Supreme Court in the matter of Mustakmiya (supra) has held that such incidents do not have potentiality of disturbing the peace and public tranquility.

8. Upon perusal of the F.I.R. lodged against the petitioner, it appears that the petitioner and one another were transporting liquor in question from Rajasthan towards Ahmedabad. On the way, Police had stopped them. However the petitioner did not halt his truck and had to be chased for quite some distance before he could be intercepted. The Judgment in the matter of Mustaqmiya (supra) has been distinguished by the Hon'ble Supreme Court in the matter of Kanji S. Zala (supra). Moreover in the matter of Amanulla Khan (supra) the Hon'ble Supreme Court, having considered the statements of witnesses narrating similar incidents, has held that such activities are not mere breach of law and order, but the same amount to breach of public order. Similar view has been taken by this court in the matter of Gopal Gangaram Nepali vs. Commissioner of Police, Ahmedabad City and Others, (1996(3) G.L.R. 82). I am, therefore, of the view that the detaining authority had rightly held that the petitioner's activities were prejudicial to the public order.

9. Mr. Patel has submitted that had the privilege claimed by the detaining authority been genuine, the occupation of the first witness would not have been disclosed to the petitioner. However, it is only the name of the first witness which is withheld from the petitioner and his occupation is manifest from the contents of the statement made by him. It is true that the witness has referred to his being a driver, driving a mini-truck in the statement given by him. However the mere fact that the occupation of the witness is not

withheld from the petitioner would not make the privilege claimed under Section 9(2)) of the Act in respect of the said witness, improper.

10. For the reasons recorded hereinabove, the petition is dismissed. Rule is discharged.

Date: 10/8/1999.

(ccshah) -----